

**MEMO# 1466**

October 11, 1989

# **INSTITUTE SUBMISSION TO SEC CONCERNING PROXY VOTING RESPONSIBILITIES OF INVESTMENT ADVISERS[B[1~**

October 11, 1989 TO: SEC RULES MEMBERS NO. 58-89 INVESTMENT ADVISER MEMBERS NO. 51-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 52-89 RE: INSTITUTE SUBMISSION TO SEC CONCERNING PROXY VOTING RESPONSIBILITIES OF INVESTMENT ADVISERS

As you know, the U.S. Department of Labor in February 1988 issued a letter describing the responsibilities of investment managers under the Employee Retirement Income Security Act of 1974 (ERISA) to vote proxies on securities held by retirement plans. (See Institute Memorandum to Pension Members No. 15-88, Investment Adviser Members No. 9-88, and Investment Adviser Associate Members No. 8-88, dated March 3, 1988.) The SEC is currently undertaking a similar review of the proxy voting responsibilities of investment advisers under the Investment Advisers Act of 1940. After forming a subcommittee to address this issue, the Institute met with the SEC staff in August to present its preliminary conclusions. The attached letter was submitted in response to issues raised at the August meeting. Specifically, the Institute letter recommends that SEC guidance in this area take the form of an interpretive release and encloses a draft of such a release. The draft interpretive release states that an investment adviser that has the power to manage, acquire or dispose of securities with respect to a client's account generally thereby assumes the responsibility to vote proxies on such securities. This responsibility however may be retained by the client or assigned to another party through explicit agreement, a pattern of past practice, or other facts and circumstances. The draft release also confirms the primary responsibility of the custodian to forward proxy materials in a timely manner. In addition, the investment adviser has the responsibility to take reasonable steps to assure that proxy materials concerning matters of economic significance are received from the custodian, but reasonable steps will be deemed to have been taken if the adviser notifies its client that the custodian may not be satisfying its responsibilities. Matters of economic significance may be identified by reference to the listing in New York Stock Exchange Rule 452.11, which describes issues with respect to which member organizations may not vote without customer instructions. Under the draft release, the best economic interest of the client generally should be the investment adviser's sole consideration in exercising the responsibility to vote proxies. An investment adviser may consider other facts by agreement with the client or under other appropriate facts and circumstances, such as statutory restrictions. Finally, the draft release states that an investment adviser should

maintain records of its votes concerning matters of economic significance, and recommends that the adviser maintain written procedures concerning proxy voting. The remainder of the draft release lists issues that these recordkeeping and other procedures should address. We will keep you informed of further developments. Kathy D. Ireland  
Associate General Counsel Attachment

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